

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

GEORGIOS N.	)	8:14CV35
DIAMANTOPOULOS,	)	
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM</b>
v.	)	<b>AND ORDER</b>
	)	
NEBRASKA GOVERNOR, et al.,	)	
	)	
Defendants.	)	

This matter is before the court on Plaintiff's Motion for Leave to Proceed In Forma Pauperis ("IFP"). (Filing No. [2](#).) As set forth in the Prison Litigation Reform Act ("PLRA"), a prisoner cannot:

bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

[28 U.S.C. § 1915\(g\)](#).

The following three cases or appeals brought by Plaintiff were dismissed because they failed to state a claim upon which relief may be granted or because they were frivolous:

- *Rehbein v. Nelson, et al.*,<sup>1</sup> No. 4:95CV3157 (D. Neb.), dismissed on August 18, 1995. (Case No. 4:95CV3157, Filing Nos. 13 and 14 ([see Docket Sheet](#)).)
- *Diamantopoulos v. Director of Corrections, et al.*, No. 4:05CV3097 (D. Neb.), dismissed on May 13, 2005. (Case No. 4:05CV3097, Filing Nos. [9](#) and [10](#).)
- *Diamantopoulos v. State of Nebraska, et al.*, No. 8:07CV31 (D. Neb.), dismissed on October 14, 2008. (Case No. 8:07CV31, Filing Nos. [95](#) and [96](#).)

The Eighth Circuit has recognized that civil actions or appeals dismissed as frivolous, malicious, or for failure to state a claim before the effective date of the PLRA are to be counted in determining whether a prisoner has three “strikes” and therefore may no longer prosecute a claim in forma pauperis. *See In re Tyler*, [110 F.3d 528, 529 \(8th Cir. 1997\)](#) (recognizing without discussion the dismissal of Plaintiff’s pre-PLRA claims in determining his number of strikes). Accordingly, Plaintiff has until **April 4, 2014**, to show cause why he is entitled to proceed IFP pursuant to [28 U.S.C. §1915\(g\)](#). Alternatively, Plaintiff may pay the full \$400.00 filing and administrative fees no later than **April 4, 2014**. In the absence of good cause shown or the payment of the full filing fee, Plaintiff’s Complaint and this matter will be dismissed without further notice.

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Motion for Leave to Proceed In Forma Pauperis (filing no. [2](#)) is denied. Plaintiff has until **April 4, 2014**, to either show cause why he is entitled to

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<sup>1</sup>Diamantopoulos is also known as Cary Nelson Rehbein. *See* Nebraska Department of Correctional Services, Inmate Locator, at <http://dcs-inmatesearch.ne.gov/Corrections/InmateDisplayServlet?DcsId=35084> (last visited March 3, 2014) (*See also* Filing No. [1](#) at CM/ECF p. 7 (inmate number 35084).)

proceed IFP pursuant to [28 U.S.C. §1915\(g\)](#) or pay the full \$400.00 filing and administrative fees. In the absence of either action by Plaintiff, this matter will be dismissed without further notice.

2. The Clerk of the court is directed to set a pro se case management deadline in this matter with the following text: April 4, 2014: deadline for Plaintiff to show cause or pay full filing fee.

3. Plaintiff's pending Motions (filing nos. [4](#) and [5](#)) are denied without prejudice to reassertion after a showing of good cause.

DATED this 4<sup>th</sup> day of March, 2014.

BY THE COURT:

*Richard G. Kopf*

Senior United States District Judge

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